

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-11-1995 (O&M)

Date of pronouncement: 21.11.2023

Gurdial Singh

...Appellant(s)

Vs.

Prithi Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Naresh Kumar, Advocate
for the appellant.

Mr. Gurdial Singh Jaswal, Advocate
for the respondents No.1 and 2.

NIDHI GUPTA, J.

Present second appeal has been filed by the defendant No.1/appellant herein against the judgment dated 22.09.1994 passed by the learned Additional District Judge, Hoshiarpur in Civil Appeal No.4 of 04.09.1991, thereby reversing the decision/judgment dated 06.08.1991 passed by learned Senior Sub-Judge, Hoshiarpur, dismissing the Civil Suit No.404 of 88/89 filed by the plaintiffs/respondents No.1 and 2 herein.

2. Learned counsel for the appellant/defendant No.1 inter alia submits that respondents No.1 and 2 had filed a suit for declaration to the effect that the appellant and respondents No.1 to 5 herein, being brothers and sisters, and therefore, the heirs of their mother Smt. Parmeshwari Devi (deceased), are the joint owners in equal shares of the land as described in the headnote of the plaint measuring 72 kanal 8 marla situated in revenue estate of village Dholbaha, Tehsil and

District Hoshiarpur, and land measuring 58 kanal 15 Marla situated in revenue estate of village Bhanowal, Tehsil and District Hoshiarpur; and a further declaration that the mutation No.4688, 2716 dated 29.01.1988 to the contrary is wrong, illegal and ineffective against rights and title of respondents No.1 & 2/plaintiffs and respondents No.3 to 5/defendants No.2 to 4; and for joint possession of the same as consequential relief.

3. Brief facts of the case as set out in the plaint are that Basawa Singh, father of the appellant/defendant No.1, and respondents No.1 and 2/plaintiffs, and respondents No. 3 to 5/defendants No.2 to 4, had died on 04.11.1962. Their mother namely Parmeshwari Devi died on 04.09.1987. At the time of death of Parmeshwari Devi, there was no other heir except the appellant/defendant No.1 and the respondents No.1 to 5, and thus, they were entitled to equal inheritance to the extent of 1/6th share each of the properties left by Parmeshwari Devi. However, to the contrary, appellant/defendant No.1 was claiming that Parmeshwari Devi had executed a Will dated 24.08.1987 (Ex.D-1) in his favour and that he was the sole heir of Parmeshwari Devi by virtue of the said Will Ex.D-1. It was contended in the suit that in fact, Parmeshwari Devi did not execute any Will, and Ex.D-1 was a forged document that had been prepared by the appellant/defendant No.1 after the death of Parmeshwari Devi, and the mutation sanctioned on the basis of the said so-called Will dated 24.08.1987 was ineffective and against the rights of the respondents No.1 to 5. Respondents No.6 to 12/defendants No.5 to 11 were co-sharers.

4. Learned counsel for the appellant/defendant No.1 submits that by a well-reasoned judgment, the learned trial Court had dismissed the Civil Suit filed by the plaintiffs. The same was challenged by plaintiffs by way of Civil Appeal No.4 of 04.09.1991, which has been allowed by the Additional District Judge, Hoshiarpur vide the impugned order dated 22.09.1994.

5. Learned counsel for the appellant argues that the learned lower Appellate Court has allowed the appeal of the plaintiffs primarily on the ground that the Will executed by mother of the parties Parmeshwari Devi assigned no reason as to why the other brothers and sisters of the appellant were not granted any share in the property of their mother. Learned counsel submits that the learned lower Appellate Court has gravely erred in not noticing the fact that all the witnesses including respondent No.1/plaintiff No.1 has clearly admitted that Parmeshwari Devi, mother of the appellant, while alive, was residing with the appellant. It is submitted that a natural corollary and conclusion to this admission is that Parmeshwari Devi had bequeathed the property through Exhibit D1 in favour of the appellant out of love, affection and for the services rendered by the appellant.

6. It is further contended that the learned lower Appellate Court has totally misread the Will (Exhibit D1) while coming to the conclusion that no reason had been mentioned in the Will for debarring the other legal heirs, without appreciating that clear cut reasons for debarring the other legal heirs find mention in the Will. It

therefore, seemed that the learned lower Appellate Court reversed the findings on an issue pertaining to the validity of the Will executed by Parmeshwari Devi, without applying its mind.

7. It is contended that the learned lower Appellate Court has also incorrectly held that the said Will was not proved and was a forged document. Learned counsel argues that in holding as above, the learned lower Appellate Court has gravely erred in not taking into consideration that the appellant had proved the genuineness and validity of the Will (Exhibit D1) executed by Parmeshwari Devi, mother of the appellant, beyond reasonable doubt through cogent evidence on record.

8. It is argued that in this regard the learned lower Appellate Court has not properly appreciated the testimony of DW3 and DW4. It is further submitted that the First Appellate Court is also in error in not noticing the fact that both the attesting witnesses to the Will were independent witnesses; and, that it has further come on record that the appellant who was the beneficiary of the Will, was not even present at the time of its execution. It is submitted that this shows that the Will executed by deceased-Parmeshwari Devi is a genuine one and cannot be disbelieved merely on the ground that witnesses were not residents of the same vicinity, especially when both are reputed persons.

9. Learned counsel further submits that the learned lower Appellate Court has gravely erred in law in not taking into consideration that as per the existing position of law, non-registration of the Will does not, in any way, affect the genuineness of the same and an

unregistered Will cannot be doubted merely on the ground that the same had not been registered.

10. Learned counsel for the appellant submits that there is no evidence whatsoever on record on the basis of which the learned lower Appellate Court held that the thumb impression of the deceased- Parmeshwari Devi had been falsely procured. It is submitted that even no handwriting expert had been examined to prove this. Moreover, in the plaint, there was no challenge by the plaintiffs to the Will and there is no allegation of fraud with regard to the Will. In fact, findings of the learned lower Appellate Court are contrary to the evidence on record.

11. In support of his contentions, learned counsel for the appellant relies upon judgment of the Hon'ble Supreme Court in **"Swarnalatha & Others Vs. Kalavathy & Others"** Law Finder Doc ID # **1962613**; judgments of this Court in **"Charan Singh Vs. Bissi (Smt.)"** Law Finder Doc ID # **51403**; **"Smt. Dano & Others Vs. Mohar Singh & Others"** Law Finder Doc ID # **128292**; and **"Sohan Singh Vs. Preet Kamal Singh & Others"** Law Finder Doc ID # **732790**.

12. Per contra, learned counsel for the respondents No.1 and 2/plaintiffs submits that the appellant in his testimony as DW5 had admitted that his mother Parmeshwari Devi gave no reason for not giving the *"jaidad"* to the rest of the brothers and sisters. It is submitted that accordingly, in view of this admission on part of the appellant in his evidence, the reasoning of the lower Appellate Court in allowing the Appeal of the plaintiffs was correct.

13. Learned counsel further argues that in order to prove the execution of the Will, under Section 59 of the Indian Succession Act, 1925 it was incumbent upon the defendants to establish that Parmeshwari Devi was of sound disposing mind at the time of execution of the Will. It is stated that the Will (Exhibit D1) is dated 24.08.1987 and Parmeshwari Devi died a few days thereafter on 04.09.1987 at the age of 90 years. Accordingly, the soundness of her mind is questionable because of her age.

14. It is further contended that as per Section 63 of the Indian Succession Act, it was required that she attested the Will after understanding it and both the witnesses had seen her signing it and the witnesses had appended their signatures to the Will only thereafter. Sections 59 and 63 of the Indian Succession Act, 1925 are reproduced hereinbelow:-

“59. Person capable of making wills.—Every person of sound mind not being a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from intoxication or from

illness or from any other cause, that he does not know what he is doing.”

“63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary”.

15. Learned counsel for the respondents submits that as per law laid down by Hon’ble Supreme Court in **H. Venkatachala Iyengar Vs. B.N. Thimmajamma & Others AIR 1959 SC 443**, to dispel suspicious circumstances, it is incumbent upon the propounder of the Will to prove the execution of the Will, and, even if execution is proved then it is

incumbent upon him to dispel all suspicious circumstances. Learned counsel argues that in the present case, the propounder of the Will is the appellant/defendant No.1 and he has been unable to dispel all the suspicious circumstances surrounding the Will. It is contended that in the present circumstances fraud was not to be proved by the plaintiffs and therefore, the learned lower Appellate Court after appreciating all the evidence on record, has given the correct judgment. It is submitted that in the present case, the plaintiffs were not required to challenge the Will as they were claiming inheritance as per Indian Succession Act, 1925. In support of his contentions, learned counsel for the respondents relies upon judgment of Madras High Court in **“M. Sundararaju Vs. S. Periasami” S.A. No.71 of 1988 decided on 06.10.1999 Law Finder Doc Id # 454327.**

16. No other argument is made on behalf of the parties.

17. I have heard learned counsel for the parties and given my thoughtful consideration to the voluminous arguments, evidence, and case laws cited by the parties in support of their contentions.

18. The learned trial Court, on the basis of the pleadings of the parties framed the following issues:-

*“1. Whether the suit is not maintainable in the present form?
OPD*

*2. Whether Smt. Parmeshwari Devi executed a valid will dated 24.8.87 in favour of deft.No.1? If so, to what effect?
OPD*

3. Whether plaintiffs are entitled to declaration prayed for ?

OPP

4. Relief".

19. The learned First Appellate Court has allowed the plaintiffs' appeal primarily on account of the following reasoning:

"14. To decide about the Will, statement of Gurdial Singh, respondent No.1, who is contesting the suit under appeal is important. It is in his statement that his mother executed a Will dated 24.8.87, which is Ex. D.1. It is admitted by DW5 that the same was got registered after the death of Parmeshwari Devi. The said Will was executed in favour of Gurdial Singh alone. From the perusal of the Will no reason has been assigned why the brothers have been left over; whereas it has been specifically come in the evidence of DW1 that all the brothers are cultivating the land which belonged to Mohinder Singh, their brother and after the death of Mohinder Singh the land comes to the share of their mother. It has been admitted by Gurdial Singh respondent that the land in dispute belonged to Mohinder Singh and after his death the said land comes in the share of Parmeshwari Devi. It is admitted by Gurdial Singh that the said brother Mohinder Singh was residing with all the brothers. Gurdial Singh is not sure about the death of his real brother Mohinder Singh. It is admitted by Gurdial Singh respondent that his sisters came four months earlier from the death of his mother and other sisters came 1 ½ years and thereafter both sisters came 6 or 7 days earlier of the death of his mother. It is admitted by Gurdial Singh that he did not disclose to his sisters about the execution of the Will. It is also admitted that Gurdial Singh was not in his house when Parmeshwari Devi executed the alleged Will. No reason has been assigned why the Will was

executed in his absence. Admittedly the death of Parmeshwari Devi took place after a few days. That casts a suspicion about the execution of the Will. It is also admitted that no reason has been assigned by his mother why the other brothers and sisters were not given the sahre (sic) out of the disputed land. It is also admitted that no partition between their brothers took place. Very important factor is that the land which is in dispute was jointly cultivated by all the brothers as per the statement/admission of Gurdial Singh. It is also admitted that his mother got the pension and he used to write the application which was scribed by Roshan. It is only under the garb of these applications that Gurdial Singh might have obtained the thumb impression on the blank papers on which subsequently alleged Will was drafted. If at all his mother was serious to execute the Will then she could easily come with Gurdial Singh and got the Will registered during her lifetime. Not only this she was not in a position to walk aline. It is not explained how and with whom she went from executing the Will. It is also admitted by respondent Gurdial Singh that his mother never used to come outside and it is also admitted that she went to her parents house last time 5 or 7 months back. It is also admitted that Parmeshwari Devi, his mother used to visit the house of the appellant, meaning thereby the version of the appellant is correct that their mother used to visit all his sons and, therefore, there was no occasion to execute the Will in favour of Gurdial Singh alone.

Xxx xxx

17. In this case as already discussed the both attesting witnesses are of different villages, which casts a serious doubt in the execution of the Will. Moreso, executants of the Will died after a few days, which is one of the solid ground to

believe that Will is prepared under the fictitious circumstances.

18. Learned counsel for the appellant further relied upon 1984 C.L.J. page 481, Achhri Vs. Gurdip Kaur, where in it has been held that no reason has been assigned why the real brothers and sisters had been left over particularly when it is admitted by Gurdial Singh that his mother used to visit Pirthi Singh and all the brothers are cultivating the disputed land jointly. Under these circumstances, the Will is surrounded by the suspicious circumstances. Therefore, the said Will is not proved and the same is a forged document. Hence judgment of the trial court is set aside. The appeal of the appellant is accepted”.

(Emphasis added)

20. We shall test each of the above grounds/reasoning adopted by the learned First Appellate Court on the basis of the evidence on record.

21. The first ground on which the learned First Appellate Court has allowed the plaintiffs’ appeal is that the disputed Will Ex.D-1 assigns no reason for excluding the other brothers and sisters of the appellant as beneficiaries of the estate of the deceased Parmeshwari Devi. However, perusal of the record reveals the said reasoning of the learned 1st Appellate court to be factually incorrect. In the disputed Will/Ex.D-1 Parmeshwari Devi has categorically stated as follows:-

“My son Gurdial Singh son of Basava Singh son of Hazara Singh, village Dholwaha has been serving me with his heart. I am happy with the services rendered by him and

execute the Will that after my death, my property which is owned and possessed by me situated (in Village Dholwaha and Bhanewal District Hoshiarpur), as it is, would be of my aforesaid Gurdial Singh alone and he will perform my last rite. My other sons from the inception are residing separate from me, only Gurdial Singh my son is support to my life. My daughters are married, who are happy in their respective house, my daughters or sons or any other person would have no right in any manner over my property."

22. From the above said Will, it is, therefore crystal clear that Parameshwari Devi had given categoric reasons for leaving her property to the appellant.

23. Furthermore, PW1/plaintiff No.1/respondent No.1 herein, in his cross-examination has admitted that he and Parmeshwari Devi lived separately, and that Parmeshwari Devi lived with the appellant. From a co-joint appreciation of the above said facts, it would be reasonable to conclude that Parameshwari Devi bequeathed her share to the appellant as admittedly she had lived with him for more than 20 years after the death of her husband; and for the love, affection and services rendered by the appellant towards her during this period. Moreover, it is admitted fact on record that Mohinder Singh had left his share of the property to Parameshwari Devi; who, for the aforesaid reasons, had bequeathed the same to the appellant. Thus, the reasoning of the 1st Appellate court, that there is no reason given for excluding the defendants, is contrary to the record.

24. In this context reference may be made to judgment of this Court in **“Smt. Dano & Others Vs. Mohar Singh & Others”** Law Finder Doc ID # 128292, wherein it has been held as follows:-

“Will - Joint family property - Exclusion of class-I heirs - Will amply proved - No evidence that it was executed as a result of any fraud, under influence or duress - Simply because of the fact that class - I heirs have been excluded from inheriting the property of testator, it cannot be said that the will is not genuine - The testator may have his own reasons for excluding some of the legal heirs - Order of first Appellate Court holding the will and setting aside order of trial Court not to be interfered with”.

(Emphasis added)

25. The second ground on which the First Appellate Court has allowed the plaintiffs’ appeal is that *“Gurdial Singh was not in his house when Parmeshwari Devi executed the alleged Will. No reason has been assigned why the Will was executed in his absence. Admittedly the death of Parmeshwari Devi took place after a few days. That casts a suspicion about the execution of the Will.”* It is my considered view that the above said reasoning of the learned First Appellate Court is patently fallacious. On the contrary, the fact that the Will was executed in the absence of the appellant, assigns greater credibility and weightage to the desire and intent of the executor of the Will as, admittedly, the same was not influenced by the presence of the appellant.

26. In this regard, reference may be made to judgment of this Court in **“Charan Singh Vs. Bissi (Smt.)” Law Finder Doc ID # 51403**, wherein it has been held as under:-

“Will/Registration of Will/Suspicious circumstances – Will takes effect after the death of the testator and it is a solemn document – Scribe and the attesting witnesses unequivocally supported the execution of the Will – It has not been stated by any of the witnesses that the beneficiary was present at the time of execution of the Will – Registration of a Will is not compulsory – Non registration thereof itself is no ground for discarding the Will – Nothing to suspect the validity of the Will – Will upheld judgment of the lower appellate Court reversed”.

(Emphasis added)

27. The third reason assigned by the learned First Appellate Court is that *“It is only under the garb of these applications that Gurdial Singh might have obtained the thumb impression on the blank papers on which subsequently alleged Will was drafted.”* (Emphasis supplied). I find the aforesaid reasoning of the learned 1st Appellate Court to be nothing but pure conjecture, as there is not even a smidgen of evidence on record to suggest let alone support the idea that the appellant had obtained the thumb impression of Parmeshwari Devi under false pretexts on blank papers, which he subsequently used to prepare the disputed Will. There is no evidence whatsoever on record on the basis of which the learned First Appellate Court could have held that the thumb impression of the deceased-Parmeshwari Devi had been falsely

procured. Even no handwriting expert had been examined to prove this. Moreover, in the plaint, there was no challenge by the plaintiffs to the Will and there is no allegation of fraud with regard to the Will.

28. In fact, in this regard, the conclusion of the learned First Appellate Court is contrary to the evidence on record as the learned First Appellate Court has ignored the very relevant and important testimonies of DW3 and DW4. The Will (Exhibit D1) was duly proved by DW3, who is the Deed Writer, who had scribed the Will and had produced his Register (Exhibit D2); as also by DW4, who is one of the attesting witnesses to the Will.

29. Translated copy of statements of the abovementioned witnesses was provided by the counsel for the appellant. Copy of the same supplied to counsel opposite. After perusal of the same, learned counsel for the respondents supplied another copy with necessary corrections.

30. With the approval and consent of learned counsel for the parties, the reconciled versions of the testimonies of the said witnesses are as follows:-

“DW3.

Statement of Khushi Ram, Deed Writer Bhunga Nem Lal

It is stated that I brought the summoned register. Original will has been seen, which was scribed by me. The entry thereof was entered in my register at Sr. No. 141 dated 24.8.87 executed by Smt. Parmeshari Devi wd/o Wasava Singh, village Dholwaha etc, in favour of Gurdial Singh son of Wasava Singh, Village Dholwaha.

There are thumb impression and signatures of Parmeshari Devi and witnesses in my register. This Will was scribed on the asking of Smt. Parmeshari Devi, which after scribing got read over the same. And Parmeshari Devi had affixed her thumb before all the witnesses. The witnesses also appended thumb impressions and signatures in the presence of Parmeshari Devi. The Will dated 24.4.87 is Ex. D1. Photocopy is Ex. D2 is entry of my register. Parmeshari Devi was in sound mind at the time of executing the Will.

Xxxx

The will was scribed at 11-12 AM. At the time of scribing the Will, 2 witnesses were present. Again said that they came along with Parmeshari. I never prepare rough copy of any Will. Firstly Parmeshari appended her thumb impression, thereafter Dasaundi Ram appended his thumb impression. Thereafter Parmeshari Dass appended his signatures. I did not disclose the details of land, rather disclosed the names of aforesaid villages. I don't know anyone personally. I don't know even Gurdial Singh personally. Will written within 15-20 minutes. I cannot tell why will was executed in favour of who has registered of Will. I don't know that whether Registrar was sitting in Peshi or not on that day. I cannot tell verbally as to why she has not executed the will in favour of others sons. It is incorrect that the will is false and forged and Gurdial Singh, who is defendant, I cannot say that she was hard of hearing. It is incorrect that he is deposing falsely. Parmeshari Devi was identified by witnesses. It is wrong that I have deposed falsely.

21.5.90"

(Emphasis supplied)

"DW4

Statement of Sh. Parmeshari Dass son of Sh. Kirpa Ram, aged 66 years, resident of Tentpal.

It is stated that I know Parmeshari Devi, resident Dholwaha. My elder sister was her mother-in-law. I used to visit her. I have seen original will Ex. D1. I appended my signatures thereon as witness. This was scribed by Deed writer at her asking. After scribing, it was read over. Parmeshari Devi and witnesses have appended their signatures. Signatures and thumb impression were appended before each other. Second witness Dasaundi Ram Sarpanch appended his thumb impression before me and Parmeshari Devi. Parmeshari Devi was in sound mind at that time. I was also present at the time of registration of Will and appended my signatures as a witness before the Sub-Registrar. At the time of registration of Will, Gurdial Singh appeared before the Sub Registrar. Entry No. is Ex. D3. Parmeshari Devi appended her thumb impression on Ex. D1 in my presence.

21.5.90

XXXXXX

DW4 on SA

Statement of Sh. Parmeshari Dass

XXXXX Parmeshari Devi was mother-in-law of my elder sister and my village is at a distance of 5 KM from Dholwaha. I frequently used to visit Dholwaha. I don't remember the date of death of Parmeshari Devi. She was died in the 9th month. Lastly I met Parmeshari Devi lastly on 24.11.87 at the time of scribing the will. The will was scribed at Bhunga. Even prior to scribing the Will, she was talking about Will and she was asking to execute the Will in favour of Gurdial Singh. Parmeshari Devi had 5 sons and 2 daughters. One son Mahinder Singh had died. I don't know when he died. She was staying in his house. I have no knowledge about his cremation. At the time of death of Parmeshari Devi, I was not present. I have not gone to attend Pagadi ceremony, otherwise I express my condolence with Gurdial Singh. I don't know that her daughters used to visit Parmeshari Devi or not. Because Gurdial Singh was serving Parmeshari Devi, due to which she did not give anything to remaining sons and daughters. I cannot tell how much area was given by Parmeshari Devi. The land in village Dholwaha was inherited by Parmeshari Devi after the death of her unmarried son Mahinder Singh. I was called by Parmeshari Devi at the time of executing the Will as she was to execute the will. I went on my cycle and we did not go together. I do not know that earlier also she used to go, to and fro in bus. I, Dasaundi Ram and Parmeshari Devi met each other at Bhunga, where we reached at 11 AM. The will was

not scribed before my reaching at Bhunga. It took 15 minutes to scribe the Will. Parmeshari Devi used to append her thumb impression. It is incorrect that the Will is fake and forged and prepared in connivance with witnesses. Firstly Parmeshari Devi appended thumb impression and I appended signatures. Thereafter, Dasaundi Ram appended thumb impression. I have no any kind of dispute with the parties. It is incorrect that I have given false statement. I did not tell the plaintiff about Will. The registry of Will could not be made on the even date as on that day, Tehsildar was not on duty, I don't remember the day".

(Emphasis supplied)

31. It is my considered opinion that, in view of the above said uncontroverted evidence on record, the argument of the respondent in respect of Sections 59 and 63 of the Indian Succession Act, 1925 are liable to be rejected.

32. Reference may also be made to the testimony of the appellant/DW5, which corroborates the above said evidence on record.

"DW5:-Statement of sh. Gurdial Singh aged 53 years

It is stated that Parmeshari Devi was my mother and was residing with me. I was serving her. She executed a will in my favour. I have seen the original Will, D1, which my mother has executed in my favour. Will D1 was registered after the death of Parmeshari Devi. At that time, I was present. I have appended my signature on endorsement Ex.D3. The land of village Bhanowal came to Parmeshari Devi after the death of her mother and land of village Dholwaha after the death of our brother. The mutation was sanctioned on the basis of Will in my favour. At the time of mutation plaintiffs raised no objection. After the death of Parmeshari Devi, I performed the last rites.

XXn

We are 5 brothers and 2 sisters. One bother died. The brother who died use to live with all. Again said he used to reside with me. I cannot tell when he died. The land of village Dholwaha inherited by Mohinder Singh from our father. Our sisters used to visit us.

Younger came 4 months prior to death and elder one came 1 ½ years earlier. After 6-7 days both sisters came there. I have not made any conversation with them regarding Will. The contents of Will were got scribed by my mother. I have not gone at the time of execution of Will. How my mother gone for execution of Will, I don't know. I came 3-4 days thereafter to my house. My mother handed over Will to me. Regarding execution of Will, she never talked with me. I do not know why my mother executed Will in my absence. On seeing the Will, came to know that the Will was executed on 24.8.87. When I came to know about the Will I have not talked to anyone. My mother told me no reason, why she has not given property to other brothers and sisters. No regular partition had taken place. We all cultivate Mohinder Singh land. The land of village Bhanoal cultivated by our maternal uncle. My mother used to get pension, but she never withdrew it. I used to move and attempt for getting pension. I submitted applications in this regard. The applications were go thumb marked and dispatched. In our village there was one Roshan Lal, who was Head clerk and now dead through him applications were filed. The applications were hand written in English. I do not remember when our mother last time appended thumb impression on the application. It was appended about 4/5 months earlier. During this period she did not use to go outside. Go out on need only. I know when she went out last time. About 5-7 months back my mother went to her parents home. On the day of death, my mother alright. My mother used to visit house of Pirthi, but she don't stay with him. In our village we receive Punjab Kesri, Ajit, Hind Smachar, Tribune Newspaper. It is wrong that te Weill forged and fabricated. It wrong that the paper which thumb marked by Parmeshwwari Devi on blank paper, the same was obtained by you giving an understanding that the same was required for moving application for grant of pension and used for executing Will. It is wrong that I asked my mother to execute Will in his favour but he told that for her everyone is equal. I cannot get time before death of Parmeshwari Devi to get the Will registered. It is wrong that my mother last rites were performed by plaintiffs. It is wrong that I am deposing falsely.

RO&AC

SD/-

Gurdial Singh 6.6.90"
(Emphasis supplied)

33. In the above said factual scenario, it would be apposite to make reference to the judgment of Hon'ble Supreme Court in **"Swarnalatha & Others Vs. Kalavathy & Others"** Law Finder Doc ID # **1962613**, wherein it has been held as follows:-

"Probate of Wills - Exclusion of one of natural heirs from bequest, cannot by itself be ground to hold that there are suspicious circumstances in Wills.

Probate of Wills - No place for Court to see whether distribution made by testator was fair and equitable to all of his children - Court does not apply Article 14 to dispositions under Will.

A. Successions Act, 1925, Section 384 - Probate of Wills - Suspicious circumstances - Mother and father, vide Wills respectively, bequeathed their properties in favour of their two sons but not in favour of their only daughter - Held, exclusion of one of natural heirs from bequest, cannot by itself be ground to hold that there are suspicious circumstances - While appreciating genuineness of execution of Will, Court does not see if distribution made by testator was fair and equitable to all of his children - No application of Article 14 of the Constitution to dispositions under Will - Exclusion of daughter happened in very natural way - Will states that a time of marriage of daughter she was given 50 sovereigns of gold jewellery and various amounts, totalling to Rs.75,000/-, were given to her at different points of time and further given Rs.25,000/- for purchasing two plots of land and Rs. 40000/- for discharging her husband's debt - Further, Daughter's daughter was married to surviving son of testatrix.

B. Successions Act, 1925, Section 384 - Probate of Wills - Suspicious circumstances - Probate proceedings by second son and daughter of couple contested on ground that eldest son (deceased) of their parents played fraud by taking signatures of their mother on blank papers and fabricated same into Will - Held, Held, once it found that father not only attested mother's Will and in his own Will, he made mention of mother's Will, all suspicious circumstances sought to be projected automatically failed - Under both Wills, properties equally distributed between two sons First son is now no more - Admittedly, daughter given in marriage to second son of testator - Therefore, if bequest under two Wills go, second son of testator family may eventually receive 2/3rd share of properties, which is more beneficial for him than getting half share under Wills - Therefore, setting aside of probate of Will unsustainable and set aside.

*....25. The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled and it needs no reiteration. It is enough if we make a reference to one of the recent decisions of this Court in **Kavita Kanwar v. Mrs. Pamela Mehta and Ors., AIR 2020 SC 544** where this Court referred to almost all previous decisions right from **H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443**. But cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned. This can be seen from the fact that almost all previous decisions of this Court referred to in Kavita Kanwar (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness*

of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a Will."

(Emphasis added)

34. The veracity of the Will has also been doubted as the testatrix was *"Not only this she was not in a position to walk a line."* and because *"both attesting witnesses are of different villages, which casts a serious doubt in the execution of the Will."* The said conclusions of the learned First Appellate court are factually incorrect in view of the following findings returned by the learned trial Court as recorded in paras 7 and 8 of the judgment dated 06.08.1991:

"7. It is admitted fact that Basawa Singh husband of Parmeshwari Devi died in the year 1962. Pirthi Chand plff. Appearing as his own witness had admitted that just after 4/5 years of the death of Basawa Singh, Parmeshwari Devi had started living with Gurdial Singh defendant and till her death she continued staying with Gurdial Singh. Gurdial Singh says that Parmeshwari Devi was living with him and he was rendering services to Parmeshwari Devi. It is scribed in the will also that Gurdial Singh had been rendering services and Parmeshwari Devi was executing the will in favour of Gurdial Chand since her sons were residing separate and daughters were already married and were happy. Pirthi Chand plaintiff PW1, Acchar Singh PW2 and Jaswant Singh PW3 had deposed that Parmeshwari Devi was quite old i.e. about 90 years. She was hard of hearing and she was not in proper senses. It was pointed out by counsel for the plaintiffs that the will is not

registered one and the date of will is just 10 days before the date of death. Counsel for the plaintiffs argued that since Parmeshwari Devi was living with Gurdial Singh, he might be having certain blank papers of Parmeshwari Devi duly thumb marked and might have made a will on that after the death of Parmeshwari Devi. I find that it has been stated and admitted by witnesses of the plaintiffs as well as of the defendants that Parmeshwari Devi was drawing pension and she had travelled to a different village, to draw pension just 2/3 months before her death. There is no evidence that Parmeshwari Devi had any physical problem immediately before her death. Both scribe and the attesting witnesses have stated that Parmeshwari Devi was in sound disposing state of mind at the time of execution of will.

8. Defendant No.2 is another son of Parmeshwari Devi whereas defendants No.3 & 4 are daughters of the deceased. They have chosen not to challenge the will by virtue of which Gurdial Singh claims inheritance of Parmeshwari Devi. when it is admitted that Parmeshwari Devi was living with Gurdial Singh at least since 1967 upto date of death for about 20 years and he alone was rendering services, then there is a valid reason for Parmeshwari Devi to have excluded all other sons and daughters from inheritance. The will in question had been scribed by a deed writer and had been entered in the register of the deed writer. It is not necessary that a will should be a registered document. Only thing is to be seen is whether there are any suspicious circumstances attending to the will. In the circumstances of the present case, the will in question does not suffer from any suspicious circumstances and I hold Parmeshwari Devi had executed a valid will dated 24.8.87 in favour of Gurdial Singh defendant No.1. This issue

is decided in favour of defendant No.1 and against the plaintiffs”.

(Emphasis added)

35. From the above findings it is clear that the deceased Parameshwari Devi had travelled to her village just 2-3 months prior to her death, and therefore the conclusion of the appellate court that she was not capable of walking alone is incorrect; as also in view of the fact that the same is in contradiction of the testimony of the witnesses who have stated that she was of sound mental and physical health prior to her death. Further, the reasoning that as the attesting witnesses belonged to a different village, it cast suspicion on the Will, is flimsy and a spurious reasoning to say the least. Reference may be made to the judgment of this Court in **“Sohan Singh Vs. Preet Kamal Singh & Others” Law Finder Doc ID # 732790**, wherein it has been held as follows:-

“A. Will - Suspicious Circumstance – Proof – Only defence taken in written statement by appellants is to effect that Will in question is result of fraud and misrepresentation and has no binding effect upon his legal rights – Even particulars of fraud have not been pleaded – Appellant has not even clarified as to how arguments raised with regard to alleged suspicious circumstances surrounding Will amount to fraud as argued – Execution of Will also stand proved – Held, once execution of Will in question stands proved as per requirement of law, and no challenge has been made to

same, defence taken on behalf of appellant in written statement to effect that alleged Will is result of fraud, is not sustainable.

....17. At the outset, it may be noticed that counsel for the appellant has not raised any argument to challenge the due execution of the Will in question and has confined his argument only with regard to suspicious circumstances surrounding the Will. At this stage, it may further be noticed that only defence taken in the written statement by the appellant is to the effect that the Will in question is the result of fraud and misrepresentation and has no binding effect upon his legal rights. No further objection has been raised in the written statement.

18. Not only this, even the particulars of the fraud have not been pleaded as required under Order 6, Rule 4 of the CPC. Even before this Court, learned counsel for the appellant has not clarified as to how the arguments raised with regard to alleged suspicious circumstances surrounding the Will amount to fraud as argued. Once execution of the Will in question stands proved as per the requirement of law, and no challenge has been made to the same, the defence taken on behalf of the appellant in the written statement to the effect that the alleged Will is result of fraud, is not sustainable”.

36. From the above discussion, it, therefore follows that in passing the impugned order, the learned First Appellate Court has resorted to conjectures and surmises in discarding the Will on the fanciful ground that the appellant 'might have' procured the thumb impression of Parmeshwari Devi on the Will under false pretexts. The said reasoning is liable to be outrightly rejected on the short ground that there is no pleading to this effect let alone any evidence to support this conclusion.

37. Furthermore, in holding that the Will is surrounded by suspicious circumstances, the learned First Appellate Court has discarded important evidence on record, especially that of DW3/Deed Writer, and DW4/attesting witness to the Will, on the whimsical ground that as the said witnesses belonged to a different village, their evidence was not reliable. In my view, the said reasoning is erroneous and baseless.

38. Moreover, the impugned judgment is unsustainable even in terms of the case law cited above.

39. Accordingly, in view of the foregoing discussion, the present appeal is **allowed**.

40. Pending application(s) if any also stand(s) disposed of.

21.11.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No